

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2000-396-T - ORDER NO. 2001-166

FEBRUARY 26, 2001

|   |   |                |
|---|---|----------------|
| IN RE: Application of Jupiter Enterprises, Inc., 45 | ) |                |
| Barnardsville Hwy., Weaverville, NC 28787           | ) | ORDER GRANTING |
| for a Class E Certificate of Public                 | ) | CERTIFICATE    |
| Convenience and Necessity                           | ) |                |

*DBJ*

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Jupiter Enterprises, Inc., 45 Barnardsville Hwy., Weaverville, NC 28787 (Jupiter or the Company) for a Class E Certificate of Public Convenience and Necessity to haul hazardous wastes for disposal between points and places in South Carolina.

At the instructions of the Commission's Executive Director, the Company published a Notice of Filing in newspapers of general circulation throughout the State. The Company filed affidavits of publication to prove compliance with the instructions of the Executive Director. A Petition to Intervene was filed by Safety Kleen (TG), Inc. However, we allowed that Company to withdraw its Petition, pursuant to our Order No. 2001-053. No other Petitions to Intervene or Protests were filed.

Accordingly, a public hearing was held on February 14, 2001 at 2:30 PM in the offices of the Commission. The Honorable William Saunders, Chairman, presided. Jupiter was represented by John J. Pringle, Jr., and presented the testimony of Hugh M.

Boles, Susan Honeycutt, and Dan Hedgepath. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel. The Staff presented no witnesses.

Jupiter first presented the testimony of Hugh M. Boles, President of the Company. Boles testified that he started in the trucking business in 1972, at which time he got his first truck. Further, he started bulk hauling in 1973, and, in 1980, began hauling coal and other commodities for Milliken & Company on an interstate basis. At this time, he hauls coal, sand, agricultural lime, and hazardous material, such as agricultural fertilizer for that Company, and from time to time, must haul hazardous wastes. Boles states that the Company desires statewide hazardous waste for disposal hauling authority because of the varied locations of Milliken's plants.

Boles noted that he has 17 tractors and 21 trailers, most of which are end-drop dump trucks, and further states that he has 8 trucks from the model year 2000. With regard to personnel, Boles stated that the Company has 17 drivers, 2 mechanics and 3 office workers.

Boles further testified that he has the proper insurance limits, that the Company is in good financial shape and that it has no judgments against it.

In addition, Boles notes that the Company is growing, and that there is a real need for the Company's services throughout the State. Boles did note that the Company presently possesses a "conditional" safety rating from the United States Department of Transportation.

Susan Honeycutt, a Company employee, testified about the Company's attempts to rehabilitate the Company's safety rating. Honeycutt testified that the problems seen with

the Department of Transportation were primarily due to drivers driving too many hours without a break. One truck was also placed out of service for having too low a tread on one tire. Honeycutt outlined what has been done to alleviate the problems. The drivers that worked too many hours have been terminated by the Company and several policies have been instituted to make sure that these particular problems have been alleviated. (See Hearing Exhibits 1 and 2.) No reinspection for Jupiter had been performed at the time of the hearing by the Department of Transportation, but Jupiter was making efforts to have the reinspection performed. It appears that Jupiter has addressed the problems referred to in its safety inspections.

Dan Hedgepath of Milliken & Company testified as the Company's shipper witness. Hedgepath noted that Milliken is the largest private employer in the State and has 35 different locations within South Carolina. Hedgepath noted that the market was growing statewide for the type of hauling that Jupiter performs. Milliken, according to Hedgepath, would request that Jupiter haul on an intrastate basis biohazardous material, contaminated soil and asbestos from older plants, on a statewide basis. Hedgepath noted that Jupiter had been hauling materials for Milliken since 1980 on an interstate basis.

Hedgepath notes that Jupiter's operations fit Milliken's needs, and that the two companies have a strategic partnership. Further, according to Hedgepath, Jupiter performs "error-free" work, has a good track record and is very cooperative with Milliken.

S.C. Code Ann. Section 58-23-590(C) (Supp. 2000) states that the Commission shall issue a common carrier certificate of public convenience and necessity if the applicant

proves to the Commission that: (1) it is fit, willing and able to properly perform the proposed service and comply with the provisions of this chapter and the Commission's regulations and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

Commission Regulation 103-133 describes the criteria for this Commission to use to judge whether an applicant is fit, willing and able. The regulation also requires the use of shipper witnesses to address the public convenience and necessity criterion. Regulation 103-133(1)(a) states, in part, that for an applicant to be adjudged "fit," it must demonstrate or the Commission must determine that the applicant's safety rating is "satisfactory." We hold that this does not mean that the candidate must absolutely have a USDOT or South Carolina Department of Public Safety rating of "satisfactory" in every case, but that it means that the safety rating must be "satisfactory" to the Commission, giving due consideration to the evidence presented to the Commission in the matter. In the present case, we do note that the applicant actually possesses a "conditional" safety rating from the U.S. Department of Transportation. However, the evidence presented to the Commission would indicate that this rating was primarily based on drivers hours and drivers log books violations. The testimony of Company witness Susan Honeycutt convinces us that the Company is doing everything possible to try to have the safety rating converted to an actual "satisfactory" rating, including the termination of culpable employees and the establishment of new procedures. However, the Company had not been able to have a reinspection accomplished at the time of the hearing. We do think that the Company has used its best efforts, however, to alleviate the problems. Although

we hold that the applicant is otherwise fit, willing and able to provide the service requested, we do hold that Jupiter will report back to this Commission on its ongoing efforts to receive a reinspection on its safety rating, and that the Company will let us know when it achieves an actual “satisfactory” rating. If it cannot obtain the “satisfactory” rating, it will so inform the Commission, and the Commission may reexamine the issue as necessary. However, once again, we hold that the applicant is fit, willing, and able to perform the function requested, based on the testimony of Mr. Boles and Ms. Honeycutt, at this time. Further, we hold that the present public convenience and necessity require the service offered to be provided on a statewide basis, as per the testimony of Mr. Hedgepath of Milliken & Company.

Based upon the record before the Commission and the statutory requirements, along with the guidelines contained in the Commission’s regulations, we find sufficient evidence to grant the application and therefore grant Jupiter Enterprises, Inc. a Class E Certificate of Public Convenience and Necessity for the movement of hazardous wastes for disposal as defined in Regulation 103-210(2) between points and places in South Carolina. This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED THAT:

1. The application of Jupiter Enterprises, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport hazardous wastes for disposal as defined in Regulation 103-210(2) between points and places in South Carolina.

2. Jupiter Enterprises, Inc., shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to Jupiter Enterprises, Inc. authorizing the motor carrier services granted herein.

4. Prior to compliance with the above referenced requirements and receipt of a Certificate, the motor carrier services authorized herein may not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director  
(SEAL)